

CHIPS Fact-Finding Hearing Outline

Statutory Summary

- ❖ Generally governed by §48.31, Stats.
- ❖ Fact-finding hearing to be held within 30 days of the plea hearing if child is not held in secure custody. §48.30(6)(a), Stats.
- ❖ Trial to the Court unless a jury trial is requested before or during the plea hearing. §48.31(2).
 - Jury trial – 6 persons (5/6 verdict required). §48.31(2)
 - **Rules of Evidence apply.** §48.299(4)(b)
- ❖ Child victim or witness may provide testimony by deposition if court allows it. §48.31(3), Stats.
- ❖ Court or jury determines the facts using the clear, satisfactory, and convincing evidence standard of proof. §48.31(1)
 - May not find child is suffering from emotional damage, unless there is testimony from a psychologist or psychiatrist who has examined the child. §48.31(4).
 - In (U)CHIPS cases, the court may not find that the child or expectant mother is in need of AODA treatment unless an approved treatment facility has conducted an AODA assessment §48.31(4).
 - If WICWA case, the court or jury must also find that continued custody is likely to result in serious emotional or physical damage (by qualified expert witness testimony) and active efforts have been made to prevent breakup of the family. §§ 48.028(4) & 48.31(5).
- ❖ Court makes the conclusions of law related to the allegations of the petition. §48.31(4)
- ❖ Court may use written reports upon a waiver of the parties. §48.31(4)
- ❖ If child is found in need of protection or services, the dispositional hearing must be held, §48.31(7)(a):
 - Within 30 days if the child is not held in secure custody.
 - If all parties consent, court may proceed immediately with the dispositional hearing.
- ❖ If it appears that disposition of the case may include placement outside of the child's home, the court shall order the parent to provide financial information to

the court and county at least 5 days before the dispositional hearing. §48.31(7)(b) & (c).

Case Law

- ❖ A fact-finding hearing under sub. (1) was not closed until the court ruled on a motion to set aside the verdict. *In Interest of C.M.L.*, 157 Wis. 2d 152, 458 N.W.2d 573 (Ct. App. 1990).
- ❖ A child's need for protection or services should be determined as of the date the petition is filed. Children can be adjudicated in need of protection or services when divorced parents have joint custody, one parent committed acts proscribed by s. 48.13 (10), and at the time of the hearing the other can provide the necessary care for the children. *State v. Gregory L.S.*, 2002 WI App 101, 253 Wis. 2d 563, 643 N.W.2d 890.
- ❖ Even in civil cases not implicating the fundamental rights of birth-parenthood, a defaulting party may appear at the prove-up hearing and counsel may cross-examine the plaintiff's witnesses and present evidence to mitigate or be heard as to the diminution of damages. A parent in a termination-of-parental-rights case is entitled to no less, unless, of course the adult parent knowingly waives the right to counsel. *State v. Shirley E.*, 2006 WI App 55, 290 Wis. 2d 193, 711 N.W.2d 690. Affirmed on other grounds. 2006 WI 129, 298 Wis. 2d 1, 724 N.W.2d 623.